

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

285.2

DEFICIENCIES OF TEXTBOOK PROCUREMENT
PRACTICES IN CALIFORNIA

OCTOBER 1977



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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October 11, 1977

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on textbook procurement for California schools.

In violation of California law, the Department of Education usually pays more for the same textbooks than do other states. Compared with four other states, California paid more for 246 of 285 titles compared. The surcharge paid by California amounted to seven percent overall in this comparison. Mr. Jacques T. Ross, Chief, Division of Administrative Services, responding for Mr. William D. Whiteneck, Deputy Superintendent for Administration of the Department of Education, states that enforcement of the California law would require a large commitment of personnel time for four to six months! The report also mentions an uncommitted surplus of \$9.6 million derived from profits realized by selling pre-1972 textbooks to local school districts. Such is the tip of the iceberg.

By copy of this letter, the Department is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are Curt Davis, CPA, Audit Supervisor; Ronald R. Franceschi and Donald L. Truitt.

Respectfully submitted,

MIKE CULLEN
Chairman

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SUMMARY

More than \$70 million is expended annually by the State and local school districts for instructional materials.

Instructional materials are not purchased under the usual competitive procurement procedures. To ensure that favorable prices are obtained, state law requires a supplier to provide California with the lowest prices at which he sells instructional materials anywhere in the United States and to also reduce the prices to California in the event the prices charged others are reduced.

Our review of instructional material prices paid by the State and the local school districts showed that despite the price maximums established by state law, California's prices were as much as 30 percent higher than those of another state purchasing the same material under similar bid offerings and contract dates. These overcharges were made because some publishers do not comply with California law, and the State Department of Education and the local school districts do not adequately monitor the provisions of this law (page 6).

The State (page 9) and the local school districts (page 10) could obtain lower prices if they arranged longer-term contracts with publishers. The lack of long-term contracts causes California schools to usually pay a higher price for the same textbook than an out-of-state

jurisdiction with a long-term contract. In some cases, the higher price paid by California's schools is twice that of the out-of-state jurisdiction.

We recommend that the Department of Education improve the State's and the local school districts' purchasing practices (page 16). Included in these recommendations are suggestions for the Department to revise California's standard textbook contract to extend the present two-year contract to a greater length, and to review local school districts' textbook purchasing contracts to ascertain the potential savings which might be obtained if textbook purchase contracts were negotiated on a statewide basis. We also recommend the Department take all necessary steps to recover any overpayments to publishers on textbook purchases.

The Department of Education has allowed an excessive surplus of nearly \$10 million to accumulate in the State Instructional Materials Fund (page 18). These funds have been uncommitted and idle since 1973. Legislation is required to determine whether the funds can be committed for either distribution to local school districts for additional textbook purchases or return to the State General Fund.

The State Printer's failure to include all cost elements in his calculations has caused some textbooks to be manufactured at the state printing plant that could have been purchased directly from the publisher at a lower price. Further, the amount of savings reported on other textbooks manufactured by the State is not as great as reported (page 21).

INTRODUCTION

The Joint Legislative Audit Committee requested the Auditor General to review state printing and reproduction costs. In response to this request, we have reviewed the State Board of Education's and the Office of State Printing's procedures for printing and purchasing textbooks for the State's school system. This examination was conducted under authority vested in the Auditor General by Section 10527 of the Government Code. A related report on the 1976 primary voters' pamphlet printing contract was issued in March 1977.*

Textbooks are not purchased under the usual competitive procedures. Because of copyrights, there is usually only one source for each textbook. In order to assure that favorable prices are obtained, most states require publishers to charge no more for their materials than the lowest price charged to any other customer. In California, Section 60061 of the Education Code (Appendix A) was enacted for this purpose. Section 60061 requires a publisher to provide California with the lowest prices at which he sells instructional materials anywhere in the United States. This Section further requires a publisher to automatically reduce the California price if the price is lowered anywhere else in the nation and to provide free teachers' editions to the extent given elsewhere.

* Questionable Contracting Practices for the 1976 Voters Pamphlet (285.1).

The State Department of Education contracts with publishers for state-adopted instructional materials for elementary schools. The Department spends approximately \$32 million a year for this purpose. The funds are appropriated from the State General Fund with the amount provided based on a rate per pupil in average daily attendance in the public and non-public elementary schools during the preceding year. The amount is adjusted annually using the Consumer Price Index. The appropriation for fiscal year 1977-78 is \$9.88 per pupil.

Local school districts negotiate the purchase of high school and non-state-adopted elementary school instructional materials. Based on information supplied to the State Controller for fiscal year 1975-76, we estimate that local school districts spend a minimum of \$41 million a year for non-state-adopted instructional materials.

AUDIT RESULTS

PUBLISHER OVERCHARGES AND INADEQUATE PRICE GUARANTEES CAUSE CALIFORNIA TO PAY MORE FOR SCHOOL TEXTBOOKS THAN SOME OTHER STATES

The State of California and local school districts pay more for instructional materials than other states due to (1) the publishers' lack of compliance with state price maximums, (2) a lack of price guarantees on state-adopted instructional materials that matches the price guarantees offered to other states and (3) a lack of any price guarantee on non-state-adopted instructional materials purchased by local school districts.

Publisher Overcharges

Section 60061 of the Education Code (Appendix A) requires a publisher to provide California with the lowest price at which he sells instructional materials anywhere in the United States. This Section further requires a publisher to automatically reduce his California price if his price is lowered elsewhere in the nation and to provide free teachers' editions to the extent given elsewhere. There is no evidence that either the Department of Education or local school districts monitor publisher compliance with these statutory provisions.

A survey of prices paid for selected instructional materials in several states revealed that despite the price maximums established by Section 60061, the California State Department of Education pays as much as 30 percent more than another state for the same instructional materials purchased under similar bid offerings and contract dates.

We compared the prices paid by the State Department of Education on 285 state-adopted instructional material titles purchased for delivery in 1976-77 and 1977-78 with those prices paid for the same titles by the states of Arkansas, Florida, Indiana and Texas. Of the 285 titles compared, 246 were priced higher in California. The Department of Education expended about \$2.9 million for the materials included in our study and spent \$177,000, or 6.6 percent more than the equivalent price paid by the other states. Our study represented approximately 10 percent of the Department's two-year (1976-77 and 1977-78) expenditure of \$27.4 million for instructional material from commercial publishers.

Table 1 illustrates, by state, the amount of identified overcharges. Table 2 illustrates some of the price differences.

Table 1
 SURVEY OF PRICES PAID FOR 285 INSTRUCTIONAL MATERIALS
 BY FOUR STATES
 FOR 1976-77 AND 1977-78

<u>State</u>	<u>Titles Compared</u>	<u>Number Priced Higher in California</u>	<u>Comparison</u>		<u>California's Loss</u>	<u>Percentage Difference</u>
			<u>Other State's Equivalent Cost for Materials</u>	<u>California's Cost for Materials</u>		
Arkansas	128	127	\$ 845,545	\$ 931,512	\$ 85,967	10.17%
Florida	117	89	1,340,143	1,413,122	72,979	5.45
Texas	18	12	494,268	511,593	17,325	3.51
Indiana	22	18	9,938	11,115	1,177	11.84
Total	285	246	\$2,689,894	\$2,867,342	\$177,448	6.60%

NOTE: For all instructional materials used in the survey, contracts were dated and bid offerings were received in California before those in other states. Except for the Florida comparisons, the contract effective dates were also earlier in California.

Table 2
SAMPLE OF PRICE DIFFERENCES
FOR 1977-78

<u>Book Title</u>	<u>State Department of Education Price^{1/}</u>	<u>Other State's Price</u>	<u>Difference</u>
Patterns of Language (Grade 1)	\$2.73	\$2.40	\$.33
Sources of Identity	8.25	7.95	.30
Growth in Spelling (Grade 7)	4.14	3.87	.27
The Charlie Brown Dictionary	3.84	3.45	.39
Activities in Mathematics First Course	5.80	5.37	.43

1/ Excludes State of California sales tax.

Inadequate Price Guarantees for
State-Adopted Instructional Materials

The State could lower instructional material prices if it arranged for longer-term contracts.

Under current procedures, publishers offering instructional materials for state adoption in California schools must offer these materials at an agreed-upon sum for a period of two years. This contractual arrangement gives the State Board of Education a two-year price guarantee on all state-adopted materials. Several other states have similar contractual arrangements, but they obtain longer-term price guarantees than California.

Currently, California adopts instructional materials for use in schools for periods of up to six years. However, since the prices are guaranteed for only two years, the contracts may be renegotiated twice during the adoption period. Some other states, for example Tennessee and Texas, require publishers to guarantee prices for five years.

We compared the prices of 46 textbook contracts that were renewed in California during fiscal year 1976-77 with contracts issued in other states. The new contract increased prices an average of 25.8 percent over the preceding two-year contract. By contrast, a state such as Tennessee or Texas, with a longer-term initial contract, would enjoy the lower price benefits of an original contract for three years longer than California.

Inadequate Price Guarantees for
Non-State-Adopted Instructional Materials

The State of California does not negotiate publisher contracts for non-state-adopted instructional materials purchased by local school districts. Prices charged local school districts are based on the publisher's current price list. Purchase agreements between publishers and school districts do not offer price guarantee protection such as that offered the State on state-adopted materials.

Publishers selling instructional materials to local school districts are bound by the same provisions of Section 60061 as they are when selling instructional materials to the State Department of Education in that they are required to offer the lowest prices at which they offer instructional materials elsewhere. However, since local school districts do not have price guarantee contracts, publishers charge them the current catalog price. Consequently, local school districts always pay the publisher's latest price. Meanwhile, out-of-state jurisdictions with fixed price contracts pay the price that was in effect when their contracts were signed; a lesser price than the current catalog price.

We compared the prices of 61 textbooks purchased in three states and five California school districts. In all comparisons except one, the other states paid a lower price than the California school districts. The higher prices charged in California were up to more than double the other states' prices.

For example, in 1974 the State of Tennessee signed a five-year price guarantee contract for the purchase of a series of textbooks entitled "American Political Behavior." The cost of these textbooks for the five-year period ending in 1979 is \$6.48 per edition. Between July 1974 and December 1976, the San Juan Unified School District, located in Sacramento County, purchased the same textbook edition on 14 different occasions. San Juan Unified School District does not have a price guarantee contract with the publisher and must pay the publisher's current catalog price. In July 1974, the first month of the Tennessee contract, San Juan Unified School District paid a unit price of \$6.74 for the textbook compared to Tennessee's guaranteed price of \$6.48 per unit. In December 1976, two and one-half years after the Tennessee contract was signed, San Juan Unified School District paid a unit price of \$8.95, or \$2.47 more than Tennessee for the textbook. Table 3 illustrates the price changes for this textbook during the two and one-half year period.

Table 3

PRICE COMPARISON FOR
"AMERICAN POLITICAL BEHAVIOR" TEXTBOOK

<u>Date</u>	<u>Tennessee Price</u>	<u>San Juan Unified School District Price</u>	<u>Price Differences</u>
7/74	\$6.48	\$6.74	\$.26
10/74	6.48	7.55	1.07
11/75	6.48	7.90	1.42
3/76	6.48	8.30	1.82
12/76	6.48	8.95	2.47

In California, local school districts determine which textbooks will be used in their respective schools. In Tennessee, the State Board of Education adopts textbooks for all grades. Tennessee is therefore able to negotiate price guarantee contracts for all textbook purchases, whereas California is able to negotiate price guarantee contracts only for state-adopted textbooks.

In the State of Ohio, the Department of Education does not adopt the textbooks used by local school districts; however, it does establish a maximum price at which publishers may sell textbooks to local school districts. If California adopted similar procedures to provide a maximum price at which instructional materials may be sold to school districts, the local school districts would benefit from the greater textbook price stability yet maintain the autonomy to select textbooks.

Legal Interpretations

The Department of Education and some publishers believe the requirements of Section 60061 of the Education Code do not apply to lower prices contracted between publishers and other jurisdictions prior to California's contract date. Therefore, for purposes of our survey, cost comparisons were limited to contracts and bid offerings that were dated in other states later than in California. Because our comparisons are limited to those textbook purchases, the pricing data obtained represents only those California contracts in violation under the State Department of Education interpretation. It is notable, however, that California usually

paid higher prices than the other states, regardless of contract length, bid date, contract approval date or volume of purchase.

Specifically, subdivisions (a), (b) and (c) of Education Code Section 60061 provide that:

A publisher or manufacturer shall:

- (a) furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States.
- (b) automatically reduce the price of said instructional materials to any governing board to the extent reductions are made elsewhere in the United States.
- (c) provide any instructional materials free of charge in the State of California to the same extent as that received by any state or school district in the United States.

In addition to these provisions, subdivision (g) of Section 60061 states that the willful failure of a publisher to comply with the requirements of Section 60061 subjects him to a liability of three times the total sum which he was excessively paid.

Under the Department of Education's interpretation of these provisions, a contract between a publisher and another state or a school district in another state for instructional materials at a certain fixed price does not preclude the California State Board of Education from contracting with said publisher for similar materials at a higher price, provided, that the higher price at the time the California Board signs the

contract does not exceed the minimum price at which the publisher is then offering such materials for adoption or sale in any state or school district. For example, under this interpretation a textbook may be offered for sale in California for two dollars per copy notwithstanding that the publisher may be furnishing the same textbook to an out-of-state jurisdiction, under an existing contract, for less than two dollars per copy.

The Department of Education informed us that this interpretation is based on a 1947 opinion of the Texas Attorney General (Appendix B) relating to a similar statute in Texas.

Some publishers define their price guarantee responsibilities under Section 60061 as applicable only on the date the bid is submitted. This contrasts with the Department's interpretation of publisher requirements and could account for some price differences since, in California, the bids are usually received about four months prior to the contract finalization date. One major publishing firm stated:

Since we cannot control a State's call for an adoption, designation of bid date, date of execution of a contract or a contract's effective date or its duration, we have long believed that statutes such as California's are only intended to relate a publisher's lowest price warranty to the price on the date the bid is submitted (the only date controllable by a publisher).

Neither interpretation necessarily represents the legislative intent regarding Section 60061. The Legislature may have intended for California to receive the lowest price available nationally regardless of contract dates. Under this interpretation, if a textbook or other

instructional material is supplied to another jurisdiction for two dollars, then the California price should also be two dollars, regardless of when purchase contracts were signed.

Because of the uncertain legislative intent of Section 60061 and the potential savings which might be obtained if price guarantees were based on the lowest price available at the time of purchase, regardless of contract dates, we believe the Legislature should define the intent of Section 60061.

CONCLUSION

The State and local school districts are overcharged for instructional materials purchased for elementary schools. These overcharges are made because publishers do not comply with the provisions of Section 60061 of the Education Code and because the State and the local school districts have taken no affirmative action to monitor publisher compliance. In addition, because of limited or nonexistent price guarantees the State and the local school districts are paying a higher price for instructional materials than is paid by some out-of-state jurisdictions.

RECOMMENDATIONS

To improve California's instructional material purchase practices, we recommend (1) the Legislature define the intent of Section 60061 as it relates to publishers' pricing requirements, and (2) the State Department of Education:

- Determine the amount overcharged by publishers and take all necessary steps to promptly recover these overpayments.
- Improve publisher compliance with the provisions of Section 60061 by providing clear guidelines for publishers to follow.
- Monitor publisher pricing procedures to assure that California receives the lowest instructional material prices available in accordance with applicable statutes.
- Revise California's standard textbook contract to extend the present two-year contract in accordance with longer contracts in other states to achieve similar economics.
- Review the textbook purchasing contracts of California school districts to ascertain the potential savings if textbook purchase contracts were negotiated on a statewide basis.

BENEFITS

Implementing these recommendations would assure better control of instructional material purchases by local school districts and the State Board of Education. In addition, these recommendations should serve as a useful starting point for future legislation and procurement practices to assure that California schools receive the lowest textbook price nationally available in accordance with current legal requirements.

SINCE 1973, THE STATE INSTRUCTIONAL
MATERIALS FUND HAS HAD NEARLY
\$10 MILLION TO EITHER RETURN TO THE
STATE GENERAL FUND OR DISTRIBUTE
TO LOCAL SCHOOL DISTRICTS FOR
TEXTBOOK PURCHASES

At a time when many California school districts are complaining of insufficient funds to purchase instructional materials, the State Department of Education has accumulated an excessive surplus in the State Instructional Materials Fund (SIMF). At June 30, 1977, the SIMF surplus exceeded \$17.1 million. \$9.6 million surplus is uncommitted and is available, as it has been since 1973, for either (1) distribution to local school districts in the form of additional instructional material credit for textbook purchases or (2) return to the State General Fund.

The State Instructional Materials Fund (SIMF) provides assistance to local public and non-public elementary schools for acquisition of textbooks and other instructional materials for grades K-8. Each year, appropriations based on prior year school attendance and enrollment are transferred from the State General Fund to the SIMF. Allocations are made for purposes such as warehousing state-printed books, establishing cash allotments and providing textbook credits to each school district. The appropriation is adjusted annually for inflation.

When the SIMF was created by Chapter 929, Statutes of 1972, there was an existing inventory of textbooks. The \$9.6 million uncommitted surplus was derived from profits realized by selling these textbooks to local school districts. The 1972 statutes do not specify what is to be done with these profits. Consequently, further legislation is required to determine how these funds are to be distributed.

If uncommitted surplus funds were made available to local school districts, the total allotment availability for fiscal year 1977-78 would increase from nearly \$32 million to \$42 million, and the current allotment of \$9.88 per pupil in average daily attendance in the elementary schools would rise to about \$13 per pupil. The increase available to each school district would vary. The Los Angeles Unified School District, for example, would be entitled to about \$1.3 million whereas elementary schools in the Sacramento area would be entitled to approximately \$350,000.

If the uncommitted surplus funds are not distributed to the school districts in the form of additional credits for textbook purchases, the funds should be returned to the State General Fund for future state appropriations.

CONCLUSION

The State Instructional Materials Fund has an uncommitted surplus balance of approximately \$9.6 million. Whether this money should be redistributed to local school districts in the form of additional textbook credits or returned to the State General Fund is undecided. Current statutes are silent as to the proper treatment of the surplus. Legislation will be required to determine how these funds are to be distributed.

RECOMMENDATION

We recommend that the Legislature enact legislation to dispose of uncommitted surplus funds in the State Instructional Materials Fund by either:

- Returning the funds to the State General Fund, or
- Reallocating the entire amount of uncommitted surplus on a statewide basis to the public and non-public schools, on the same apportionment basis as annual appropriations are made.

BENEFITS

Implementing this recommendation would make available approximately \$9.6 million for either (1) return to the State General Fund or (2) reallocation to local school districts for additional textbook purchases.

THE STATE PRINTER OVERSTATES SAVINGS
FROM STATE PRINTING OF TEXTBOOKS

Although the State realizes an overall savings when the State Printer manufactures textbooks, the amount of savings is not as great as the State Printer indicates. Additionally, losses are incurred by manufacturing some of the titles. For fiscal year 1975-76, the most recent year with complete information on textbook manufacturing, the State Printer reported a savings of \$2.6 million. However, because he did not include all cost elements related to textbook manufacturing in his calculations, we estimate his reported savings are overstated by \$867,000. Additionally, because he did not include all cost elements in his calculations, some textbook titles manufactured by the State could have been purchased directly from the publisher at a lower cost.

When a school district orders a textbook, the district's credit in the State Instructional Materials Fund is reduced by the publisher's list price of the textbook. The SIMF, however, is only charged for the actual payment to the publisher. Usually these amounts are the same. When the State Printer prints a textbook, the SIMF is only charged the royalty to the publisher plus the State Printer's cost. As the State Printer's cost plus royalties paid to the publisher is usually less than the publisher's list price, a surplus is generated when books are printed by the State.

The Department of Education arranges for the state printing or commercial purchase of textbooks ordered. The Department is required to tabulate all orders received for each textbook title. From this list the State Printer selects the titles which he can manufacture at a unit cost lower than that specified in the price schedule submitted by the publisher or manufacturer.

The textbook savings generated by the State Printer are not as great as reported because (1) the sales tax paid by publishers is not deducted in cost comparisons and (2) the warehousing and distribution costs used are based on an outdated cost estimate originally calculated in 1975 by the Department of Education. Including these two items in the State Printer's calculations reduces his overall savings from \$2.6 million to \$1.7 million.

More importantly, failing to include these cost elements affects the determination of which titles the State Printer can print at a lower price than that listed by the publisher. By including all cost elements relevant to the State Printer's manufacture of textbooks, we found that for 1975-76 the State Printer lost an aggregate of \$32,000 on 18 of the 84 titles he selected for printing. Had the State Printer included all relevant costs in his calculations, he would not have selected those textbooks for manufacture.

Some of the textbooks manufactured by the State Printer had been offered to other states at a lower cost than the California contract price. Based on the lower prices offered the other states, the State Printer's savings for fiscal year 1975-76 are overstated by an additional \$516,000.

Calculating all elements of actual cost savings, including lower prices known to be offered other states, we estimate the State Printer's actual savings for fiscal year 1975-76 to be approximately \$1.3 million, or about half the net savings he claimed.

CONCLUSION

The State Printer overstates savings from state printing of textbooks. Additionally, since all cost elements are not included in his calculations, he sometimes selects textbooks for manufacture that could be purchased for a lower price from the publisher.

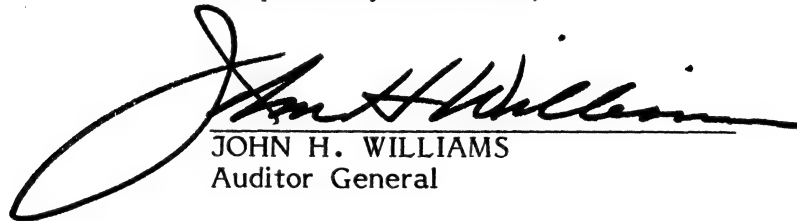
RECOMMENDATION

We recommend the Office of State Printing (State Printer) include all cost elements relevant to the manufacture of textbooks in calculations to determine which titles can be manufactured at a unit cost lower than that specified in the price schedule submitted by publishers or manufacturers.

BENEFITS

Properly implementing this recommendation would assure that the State would not pay more for school textbooks than the lowest price offered by commercial publishers or manufacturers.

Respectfully submitted,



JOHN H. WILLIAMS
Auditor General

Date: September 30, 1977

Staff: Curt Davis, CPA, Audit Supervisor
Ronald R. Franceschi
Donald L. Truitt



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

September 28, 1977

Mr. John H. Williams
Auditor General
Joint Legislative Audit
Committee
925 L Street, Suite 750
Sacramento, CA 95814

Dear Mr. Williams:

Thank you for the opportunity to respond to your draft report entitled Deficiencies of Textbook Procurement Practices in California. The Department of Education is appreciative of this Joint Legislative Audit Committee's procedure which allows early communication prior to the official submission of the report.

The Department of Education's review of this document finds no significant disagreement with the Auditor General's explanations of the way the textbooks are purchased in California. We are also in general agreement with the data on prices of books in the Auditor General's comparative study. Therefore this response will be directed toward the recommendations.

We do wish to point out that although the recommendations have to do with fiscal matters, the Legislature, the State Board of Education and the Department of Education must also consider any educational impact that may result from implementation of the recommendations.

Recommendation #1, page 16 - The Legislature define the intent of Section 60061 as it relates to publishers pricing requirements.

Response - The Department of Education's legal counsel interprets the current law as requiring publishers to submit a bid with the price for the instructional material being no greater than the lowest price being offered anywhere else in the United States at that time for that same instructional material. If subsequent to the time of submitting the bid the publisher should lower the price anywhere else in the United States, he must also lower the price for California. A legislative clarification is welcomed.

Recommendation #2, page 16, part 1 - The Department of Education determine the amount of overcharge by publishers and take all necessary steps to promptly recover the funds.

Response - Identifying the amount for those overcharges where the publisher failed to lower California's price after offering a lower price in another state would require a large commitment of personnel time for four to six months. With respect to state adopted instructional materials we will have to study the procedure to determine if it can be done within our current budget and personnel capacity or if we must request budget augmentation.

With respect to locally adopted instructional materials we will advise districts of the price controls in law and give guidance on how to assure that districts are getting the lowest price and if overcharged the steps to take in recovering the amount of overcharge.

Recommendation #2, page 16, part 2 - Improve publisher compliance with the provisions of Section 60061 by providing clear guidelines for publishers to follow.

Response - Agreed. The Department has handled this by quoting, in full, Section 60061 in the call for bids and in the contract. In addition, we will annually distribute a letter to publishers asking for information about price offerings in other states, free materials in other states, and location of office and depository in California.

Recommendation #2, page 16, part 3 - Monitor publishers pricing procedures to assure that California receives the lowest instructional material prices available in accordance with practice.

Response - This would require annual collection of prices offered in the other states either by inquiry to each state or by inquiry to each publisher. We will have to determine the degree of monitoring necessary and the commitment of personnel time and again the Department of Education will have to determine if the task needs budget augmentation.

Recommendation #2, page 16, part 4 - Revise California's standard textbook contract to extend the present two-year contract in accordance with longer contracts in other states to achieve similar economics.

Response - Recent legislation (SB 1972 of 1976) and State Board of Education action has increased the adoption period to six years. However, this recent legislation also amended Section 60223 to include the biennial revisions to price schedules under certain circumstances. The Department's legal staff is reviewing the law to determine if the new law currently permits the Department to require price contracts which are longer than two years or if corrective legislation is needed.

Recommendation #2, page 16, part 5 - Review the textbook purchasing contracts of California school districts to ascertain the potential savings if textbook purchase contracts were negotiated on a statewide contract.

Response - This recommendation involves the current school district practices for grades 9-12 since the majority of materials acquired at the elementary level involve state adoption, instructional materials credit and state ordering procedures. It is important to recognize, however, that a greater variety of textbooks and other instructional materials are acquired and used at the secondary level, due to the complex nature of the curriculum, than is the case in elementary schools. This could have a strong affect on any anticipated statewide savings.

To conduct a study of the type suggested all districts with high schools would have to be surveyed to determine the number and kinds of purchase contracts. This would be an extremely complex task to gather, arrange and analyze data in order to determine if savings could be achieved.

Finally, if legislative action is considered in this, all attention must be given to assuring districts the same flexibility which exists under the present system of local adoption.

Recommendation re \$10 million surplus, page 20 - The Legislature enact legislation to dispose of uncommitted surplus funds in the State Instructional Materials Fund by either returning the funds to the State General Fund or reallocating the entire amount of uncommitted surplus on a statewide basis to the public and nonpublic schools, on the same apportionment basis as annual appropriations are made.

Response - On April 18, 1977 the Department of Education notified the Department of Finance of the existence of this floating surplus and requested a disposition. On May 24, 1977 the Department of Finance requested that no action be taken until after July 1, 1977 and after that time the matter could be handled legislatively through the 1978 Budget Bill. On June 9, 1977 a Department of Finance audit letter recommended that the surplus be transferred to the State General Fund. The Legislature will have the opportunity to act on this matter as it reviews the Department of Education's 1978-79 budget.

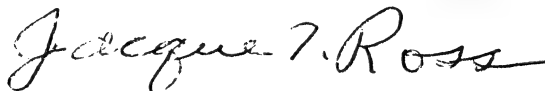
Recommendation re State Printer's savings, page 23

The response to this recommendation should come from the Office of State Printing.

In conclusion, I again would like to thank you for your work and the information provided by this report. The results of this will be of benefit to the school children in California as well as to the taxpayers.

Sincerely,

WILLIAM D. WHITENECK
Deputy Superintendent for Administration



by JACQUE T. ROSS
Associate Superintendent and Chief,
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DEPARTMENT OF GENERAL SERVICES



September 29, 1977

Mr. John H. Williams
Auditor General
California Legislature
State Capitol
Sacramento, CA. 95814

Report 285A

Dear Mr. Williams:

We welcomed the opportunity to discuss with your staff those elements of your report Deficiencies of Textbook Procurement Practices In California, September 1977, that concerned the Office of State Printing.

On Page 22, you take issue with our allocation of warehousing and shipping costs as being understated. At the time our report was issued this was the latest information we had from the Department of Education. I now understand these costs have been revised and we will, of course, accept the latest figure.

On Page 22, reference is also made to sales tax and its consideration in cost. No mention is made that State Printing pays sales tax on materials used in the manufacture of textbooks, and we were pleased to learn that credit is given in your total sales tax figure for that consideration.

You also mention that when sales tax and warehouse and distribution costs are considered, books were produced that could have been purchased for \$32,000 less. We believe this is a policy matter and in all our considerations we compare the cost of the book on the pupil's desk whether supplied by the publisher or the State Printing Plant. Consideration of how much of the sales tax goes back into the General Fund or to local communities or is lost in administrative expenses, is a refinement we have not attempted.

- 2 -

Mr. John H. Williams -

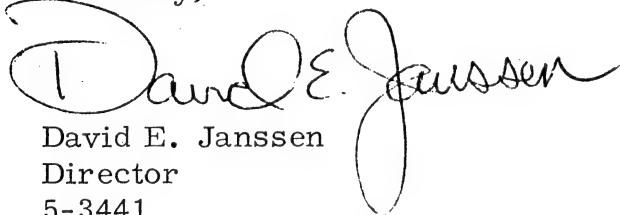
- September 29, 1977

Again, in our comparison, we feel it is only possible for us to consider books available under current California administrative procedures and it is inappropriate for us to attempt to compare with costs in other states, as mentioned in the last paragraph on page 22.

We were pleased to have you point out that savings of at least \$1.3 million were realized in 1975-76 on a volume of 3.6 million books. The fact that your recommendations did not include a study on how this savings could be maximized on the volume of approximately 15 million books the state requires each year, surprised us.

We appreciate the opportunity of working with your office in an attempt to clarify the facts in this and other issues, so that appropriate policy may be determined by the Legislature.

Sincerely,

A handwritten signature in cursive script that reads "David E. Janssen". The signature is written in dark ink and is positioned to the right of the typed name and title.

David E. Janssen
Director
5-3441

SECTION 60061 OF THE STATE EDUCATION CODE

§ 60061. A publisher or manufacturer shall:

(a) Furnish the instructional materials offered by him at a price in the State of California which, including all costs of transportation to that place, shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States.

(b) Automatically reduce the price of said instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.

(c) Provide any instructional materials free of charge in the State of California to the same extent as that received by any state or school district in the United States.

(d) Guarantee that all copies of any instructional materials sold in California shall be at least equal in quality to the copies of such instructional materials that are sold elsewhere in the United States, and shall be kept revised, free from all errors, and up to date as may be required by the state board.

(e) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, and that he will not enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the State of California.

(f) Maintain an office and depository in the State of California or arrange with an independently owned and operated depository in the State of California to receive and fill orders for instructional materials.

For purposes of the preceding paragraph of this subdivision, "instructional materials" shall mean textbooks, or instructional materials systems or instructional materials sets which include textbooks.

For purposes of textbook purchases by governing boards pursuant to subdivision (b) of Section 60264 and Section 60401, the provisions of this subdivision shall apply to every publisher or manufacturer except one whose total orders for textbooks from all governing boards in California under any section of this division are or will be, for the particular school year, less than 1,000 copies of any single title or less than 10,000 copies of multiple titles.

(g) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the governing board in the amount of three times the total sum which the publisher or manufacturer was paid in excess of the price required under subdivisions (a) and (b) and (e), and in the amount of three times the total value of the instructional materials and services which the governing board is entitled to receive free of charge under subdivision (c).

Memorandum

To : Donald L. Truitt
Office of the Auditor General
925 L Street, Suite 750
Sacramento, California 95814

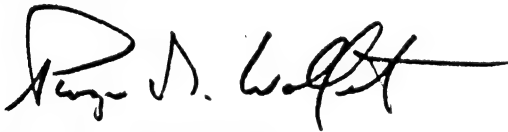
Date : May 10, 1977

File No.:

From : Roger D. Wolfertz
Legal Office, Room 535 (5-4694)

Subject: Education Code Section 60061 -
Instructional Materials

Pursuant to your request, I am attaching the only written material we have on the subject of pricing, specifically, my letter of 8/21/74 to Denoyer-Geppert, and a 1947 opinion of the Texas Attorney General. His conclusions are, in my opinion, applicable in interpreting the provisions of subdivisions (a) and (b) of Section 60061.



ROGER D. WOLFERTZ
Assistant Chief Counsel

RDW:sc
Attach.
cc: Joseph Arellano



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

August 21, 1974

Howard H. Rosenheim, President
Denoyer-Geppert
5235 Ravenswood Avenue
Chicago, Illinois 60640

Re: Instructional Materials Contract with the
California State Board of Education No. 74-5654

Dear Mr. Rosenheim:

Thank you for your letter of August 13, 1974, making the technical corrections on the face page of the contract. However, the provision you included in Paragraph 11 of page 3 of the contract is unacceptable as a part of the contract, but is entirely valid as an interpretation of subdivision (a) of Education Code Section 9261. That section provides that "A publisher or manufacturer shall (a) furnish the instructional materials offered by him at a price in the State of California which including all costs of transportation to that place shall not exceed the lowest price at which the publisher offers said instructional materials for adoption or sale to any state or school district in the United States."

This issue of prior contracts as they relate to the provisions of Section 9261(a) has been raised only one other time. It is our opinion that the existence of a contract between a publisher and another state or school district in the United States for instructional materials at a certain fixed price does not preclude the California State Board of Education from contracting with said publisher for similar materials at a higher price, provided, that the higher price at the time the California Board consummates the contract does not exceed the minimum price at which the publisher is then offering such materials for adoption or sale in any state or school district in the United States.

Although the Department of Education adheres to this interpretation of Section 9261, we do not believe that it is proper to translate it into a contractual clause. Therefore, I am re-inserting the original form of page 3 in each copy of the contract. Unless I hear

August 21, 1974

from you further within 10 days, I will forward this contract (in its reinstated form) to the State Board President for his signature.

Sincerely,

ROGER D. WOLFERTZ
Staff Counsel

RDW:ez
cc:Dr. Chunn



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

FRANCIS DANIEL

ATTORNEY GENERAL

May 21, 1947

RECEIVED

AUG 13 1974

Legal Office

Hon. L. A. Woods
State Superintendent of Public Instruction
Department of Education
Austin, Texas

Opinion No. V-213

Re: Maximum price the State
may pay for school text-
books, and related fact
questions.

Dear Sir:

We refer to your letter of May 1, 1947, from
which we quote in part:

"Article 2852, R. C. S., provides
in part as follows: ' . . . The maximum
price at which the Texas State Text Book
Commission shall contract to pay f.o.b.
the Texas depository of the publisher,
for any books to be used in the public
schools of this State shall not exceed
the minimum price at which the publisher
sells such books in wholesale quantities,
f.o.b. the publisher's publishing house,
after all discounts have been deducted. . . '

"Section 4 of the Official Texas
Textbook Contract Form prepared by the
Attorney General's office provides as
follows: 'It is hereby expressly stip-
ulated that the prices hereby contracted
to be paid the publisher f.o.b. its Texas
depository for the books herein described
and to be used in the public schools of
this State shall never exceed the minimum
price at which the publisher sells such
books in wholesale quantities f.o.b. the
publisher's publishing house, after all
discounts have been deducted. The said

publisher covenants and agrees to file in the office of the State Superintendent of Public Instruction between June 1 and June 15 of each year, a sworn statement listing the lowest net wholesale price and terms of sale of all books herein contracted for when sold to other states, counties, dealers, depositories, schools, individual purchasers, or other purchasers. And the said publisher further covenants and agrees that if at any time during the period of this contract any book or books herein named or any editions thereof substantially similar to the official samples on file in the office of the State Superintendent shall be sold at a lower net wholesale price f.o.b. publisher's shipping point to any state, county, dealer, depositories, school, individual, or others than the price agreed upon in this contract, then such lower price shall immediately become the contract price between the publisher and the State of Texas, provided the State desires to accept such books in the revised or changed edition.'

"Two books were adopted in another State in May, 1946 at a price of \$.84 per copy for each of the books. The contract was effective as of July 1, 1946. In November, 1946 these same books as far as content is concerned were offered to the Texas State Board of Education and a contract was awarded at \$.90 per copy for each of the two books. The only differences we have been able to find in the books offered in both states relates to the design on the covers. The pagination is identical and the content the same. The contract which was awarded by the Texas State Board of Education is effective as of September 1, 1947. We have only recently discovered that the books were being supplied to another state at the present time at the lower price. . .

"In view of the foregoing statutory

provisions and terms of the contractual agreement, we desire to submit for your consideration and request your opinion on the following questions:

"1) Is the State of Texas entitled to purchase these books at the price of \$.84 per copy which is the price at which they are being supplied to public schools in a neighboring state, or must the State of Texas pay the price of \$.90 stipulated in its contract?

"2) If a textbook is under contract in another state for a five-year period at a stipulated price, may the State of Texas contract to purchase this book or substantially similar editions thereof at a higher price at any time during the period in which the book is under contract in the other State?"

There being no statement in the submitted facts to the contrary, we assume for the purposes of this opinion that requirements, conditions and provisions of Articles 2842, as amended by Acts 1945, 2846, 2847, 2848, 2849, 2851, 2853, 2854 and 2856, V. C. S., have been met and that there exists by reason thereof a contract effective September 1, 1947, as approved by the Board of Education and the publisher of the two textbooks in question executed in accordance with Article 2675b-5 and 2854, V. C. S.

The price which the Board of Education may contract to pay for textbooks adopted for use in the public schools of Texas is governed by Article 2852, V. C. S. It provides that the maximum price f.o.b. the Texas depository of the publisher shall not exceed the minimum price at which the publisher sells such book in whole-sale quantities f.o.b. the publisher's publishing house, after all discounts have been deducted. Furthermore, it provides that any contract made for such book at a higher price than the maximum herein fixed shall be void.

Section 4 of the Official Texas Contract Form, hereinabove quoted, incorporates in substance the fixed maximum price provision of Article 2852. Under said contract form, the publisher further agrees that if at any time during the period of the contract any books named therein or substantially similar to the official samples on file in the office of State Superintendent

shall be sold at a lower net wholesale price f.o.b. publisher's shipping point to any State, etc., than the price agreed upon in the contract, then such lower price shall immediately become the contract price between the publisher and the State of Texas. (Emphasis ours)

It is our opinion that the phrase, "minimum price at which the publisher sells such book in wholesale quantities, f.o.b. the publisher's publishing place, after all discounts have been deducted" as employed in Article 2852, should be construed to mean that minimum price, whatever it may be, as evidenced on the sample copies of the books offered for sale and submitted to the Board of Education pursuant to the provisions of Article 2846, and on the basis of which said offer the State Board of Education and the publisher execute their contract.

If, in fact, on the date the contract was consummated between the Board of Education and the publisher, the publisher's minimum price for the textbook in question, or books substantially similar, is the lowest net price at which they are sold or offered for sale in wholesale quantities f.o.b. the publisher's publishing house to other States, counties or other purchasers, then, in our opinion, the price contracted for is in conformity with the provisions of Article 2852. If, however, subsequent to the consummation of the contract, the publisher offers and sells said textbook, or substantially similar books, at a lower net price than provided for in the contract, then the terms of the contract specifically provide that such lower price shall immediately become the contract price between the publisher and the State of Texas.

Stated in another manner, we do not believe that the minimum price clause in Article 2852 can properly be construed to mean that lowest net price at which like textbooks were offered and contracted for in wholesale quantities, f.o.b. the publisher's publishing house, at a time prior to that date when the like textbooks were offered for sale to the State of Texas and on the basis of which said offer a contract has been consummated.

Referring now to your first question based on facts submitted, if the publisher's minimum net sale price for the textbooks in question, or books substantially similar thereto, was 90¢ per copy for each of the books at the date the contract was consummated between the Board of Education and the publisher, the State must pay the price stipulated in the contract for books furnished thereunder, unless and until the publisher reduces its price when, under the terms of the contract, the lower price will immediately and automatically become the contract price between the State and the publisher.

Accordingly, our answer to your second question is in the affirmative assuming the contract made in the other State for a five-year period was consummated at a time prior to the Texas contract and assuming the lower minimum sales price offer of the publisher made to the other State was made at a time prior to the time it submitted its samples and bid to the State of Texas.

SUMMARY

Based on the submitted facts, the State of Texas must pay 90¢ per copy per textbook or books substantially similar thereto as stipulated in its textbook contract, provided the contract price did not exceed the minimum price at which the publisher sold said book in wholesale quantities, f.o.b. the publisher's publishing house, after all discounts have been deducted, at the time the Board of Education and the publisher consummated the contract; and provided the publisher does not reduce its minimum price therefor during the term of the contract.

The existence of a long term contract between a publisher and another State providing for the sale of textbooks at a certain fixed price would not preclude the Texas State Board of Education from contracting with said publisher for similar textbooks at a higher price, when

the higher price at the time the Board consummates the contract does not exceed the minimum price at which the publisher sells such books in wholesale quantities, f.o.b. the publisher's publishing house, after all discounts have been deducted.

Very truly yours

ATTORNEY GENERAL OF TEXAS

Chester E. Ollison
By Chester E. Ollison
Assistant

CEO:djm

APPROVED May 21, 1947

Price Daniel
ATTORNEY GENERAL OF TEXAS

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps